

IBA STANDARDS FOR THE INDEPENDENCE OF THE LEGAL PROFESSION

(Adopted 1990)

WHEREAS:

The independence of the legal profession constitutes an essential guarantee for the promotion and protection of human rights and is necessary for effective and adequate access to legal services:

An equitable system of administration of justice which guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, direct or indirect is imperative for the establishment and maintenance of the rule of law.

It is essential to establish conditions in which all persons shall have effective and prompt access to legal services provided by an independent lawyer of their choice to protect and establish their legal, economic, social, cultural, civil and political rights.

Professional associations of lawyers have a vital role to uphold professional standards and ethics, to protect their members from improper restrictions and infringements, to provide legal services to all in need of them, and to co-operate with governmental and other institutions in furthering the ends of justice.

NOW THEREFORE the following standards are established by the International Bar Association to assist in the task of promoting and ensuring the proper role of lawyers which should be taken into account and respected by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers, judges, members of the executive and the legislature and the public in general.

Entry into the legal professional and legal education

- 1 Every person having the necessary qualifications in law shall be entitled to become a lawyer and to continue in practice without discrimination.
- 2 Legal education shall be open to all persons with requisite qualifications and no one shall be denied such opportunity by reason of race, colour, sex, religion, political or other opinion, national or social origin, property, birth, status or physical disability.
- 3 Legal education shall be designed to promote knowledge and understanding of the role and the skills required in practising as a lawyer, including awareness of the legal and ethical duties of a lawyer and of the human rights and fundamental freedoms recognised within the given jurisdiction and by international law.
- 4 Programmes of legal education shall have regard to the social responsibilities of the lawyer, including co-operation in providing legal

services to the needy and the promotion and defence of legal rights of whatever nature whether economic, social, cultural, civil and political and specially rights of such nature in the process of development.

Education of the public concerning the law

- 5 It shall be a responsibility of the legal profession and state organs to educate the members of the public about the principles of the rule of law, the importance of the independence of the judiciary and of the legal profession and to inform them about their rights and duties and the relevant and available remedies.

Rights and duties of lawyers

- 6 Subject to the established rules, standards and ethics of the profession the lawyer in discharging his or her duties shall at all times act freely, diligently and fearlessly in accordance with the legitimate interest of the client and without any inhibition or pressure from the authorities or the public.
- 7 The lawyer is not to be identified by the authorities or the public with the client or the client's cause, however popular or unpopular it may be.
- 8 No lawyer shall suffer or be threatened with penal, civil, administrative, economic or other sanctions or harassment by reason of his or her having legitimately advised or represented any client or client's cause.
- 9 No court or administrative authority shall refuse to recognise the right of a lawyer qualified in that jurisdiction to appear before it for his client.
- 10 A lawyer shall have the right to raise an objection for good cause to the participation or continued participation of a judge in a particular case, or to the conduct of a trial or hearing.
- 11 Save as provided in these principles, a lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his or her professional appearances before a court, tribunal or other legal or administrative authority.
- 12 The independence of lawyers in dealing with persons deprived of their liberty shall be guaranteed so as to ensure that they have free, fair and confidential legal assistance, including the lawyer's right of access to such persons. Safeguards shall be built to avoid any possible suggestion of collusion, arrangement or dependence between the lawyer who acts for them and the authorities.
- 13 Lawyers shall have all such other facilities and privileges as are necessary to fulfil their professional responsibilities effectively, including:
- a) confidentiality of the lawyer-client relationship, including protection of the lawyer's files and documents from seizure or inspection and protection from interception of the lawyer's electronic communications;
 - b) the right to travel and to consult with their clients freely both within their own country and abroad;

- c) the right freely to seek, to receive and, subject to the rules of their profession, to impart information and ideas relating to their professional work.
- 14 Lawyers shall not by reason of exercising their profession be denied freedom of belief, expression, association and assembly; and in particular they shall have the right to:
- a) take part in public discussion of matters concerning the law and the administration of justice;
 - b) join or form freely local, national and international organisations;
 - c) propose and recommend well considered law reforms in the public interest and inform the public about such matters.

Legal service for the poor

- 15 It is a necessary corollary of the concept of an independent bar that its members shall make their services available to all sectors of society so that no one may be denied justice.
- 16 Lawyers engaged in legal service programmes and organisations, which are financed wholly or in part from public funds, shall enjoy full guarantees of their professional independence in particular by:
- a) the direction of such programmes or organisations being entrusted to an independent board with control over its policies, budget and staff;
 - b) recognition that, in serving the cause of justice, the lawyer's primary duty is towards the client, who must be advised and represented in conformity with professional conscience and judgement.

Lawyers' Associations

- 17 There shall be established in each jurisdiction one or more independent self-governing associations of lawyers recognised in law, whose council or other executive body shall be freely elected by all the members without interference of any kind by any other body or person. This shall be without prejudice to their right to form or join in addition other professional associations of lawyers and jurists.

Functions of the Lawyers' Associations

- 18 The functions of the appropriate lawyers' association in ensuring the independence of the legal profession shall be inter alia:
- a) to promote and uphold the cause of justice, without fear or favour;
 - b) to maintain the honour, dignity, integrity, competence, ethics, standards of conduct and discipline of the profession; and to protect the intellectual and economic independence of the lawyer from his or her client;

- c) to defend the role of lawyers in society and preserve the independence of the profession;
 - d) to protect and defend the dignity and independence of the judiciary;
 - e) to promote free and equal access of the public to the system of justice, including the provision of legal aid and advice;
 - f) to promote the right of everyone to a prompt, fair and public hearing before a competent, independent and impartial tribunal and in accordance with proper and fair procedures in all matters;
 - g) to promote and support law reform, and to comment upon and promote public discussion on the substance, interpretation and application of existing and proposed legislation;
 - h) to promote a high standard of legal education as a prerequisite for entry into the profession and the continuing education of lawyers and to educate the public regarding the role of a Lawyers' Association;
 - i) to ensure that there is free access to the profession for all persons having the requisite professional competence, without discrimination of any kind, and to give assistance to new entrants into the profession;
 - j) to promote the welfare of members of the profession and the rendering of assistance to members of their families in appropriate cases;
 - k) to affiliate with and participate in the activities of international organisations of lawyers.
- 19 Where a person involved in litigation wishes to engage a lawyer from another country to act with a local lawyer, the appropriate association of lawyers shall co-operate in assisting a foreign lawyer to obtain the necessary right of audience provided that he or she has the qualifications and fulfils the conditions required to obtain that right.
- 20 To enable the lawyers' association to fulfil its function of preserving the independence of lawyers it shall be informed immediately of the reason and legal basis for the arrest or detention and place of detention of any lawyer; and the lawyers' association shall have access to the lawyer arrested or detained.

Disciplinary proceedings

- 21 Lawyers' associations shall adopt and enforce a code of professional conduct of lawyers.
- 22 There shall be established rules for the commencement and conduct of disciplinary proceedings that incorporate the rules of natural justice.
- 23 The appropriate lawyers' association will be responsible for or be entitled to participate in the conduct of disciplinary proceedings.
- 24 Disciplinary proceedings shall be conducted in the first instance before a disciplinary committee of the appropriate lawyers' association. The lawyer shall have the right to appeal from the disciplinary committee to an appropriate and independent appellate body.

